

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emma Kaisla	Team: Squad #15	CCRB Case #: 202000323	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 01/05/2020 1:30 AM	Location of Incident: Outside § 87(2)(b)	Precinct: 103	18 Mo. SOL 7/5/2021	EO SOL 2/19/2022	
Date/Time CV Reported Tue, 01/14/2020 12:28 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 01/14/2020 12:28 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM David Hovestadt	12072	950598	103 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Fengzhong Chen	21925	962313	103 PCT
2. SGT Kengming Chang	04463	918762	103 PCT
3. POM Steven Furlan	27901	965726	103 PCT
4. LT Christophe Diakonikolas	00000	932595	103 PCT
5. POM Stevie Williamson	14402	952348	103 PCT
6. POM Nicholas Pryor	09891	961127	103 PCT
7. POM Daniel McCabe	05437	964639	103 PCT
8. POM James Barrett	09724	955744	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM David Hovestadt	Force: Police Officer David Hovestadt used physical force against § 87(2)(b).	A . § 87(2)(g)
B . POM David Hovestadt	Abuse of Authority: Police Officer David Hovestadt seized § 87(2)(b)'s property.	B . § 87(2)(g)
C . POM David Hovestadt	Police Officer David Hovestadt provided a false official statement to the CCRB.	C . § 87(2)(g)

Case Summary

On January 14, 2020, § 87(2)(b) filed this complaint with the CCRB via telephone.

On January 5, 2020, at approximately 1:30 a.m., § 87(2)(b) and her friend, § 87(2)(b) were driving home in § 87(2)(b)'s car. While § 87(2)(b) was double-parked outside § 87(2)(b)'s residence at § 87(2)(b)'s § 87(2)(b) in Queens, a white sedan hit § 87(2)(b)'s passenger side mirror. § 87(2)(b) and the two passengers of this sedan, § 87(2)(b) and § 87(2)(b) got into a dispute. Police Officer David Hovestadt and Police Officer Fengzhong Chen, both of the 103rd Precinct, drove down the street, observed the encounter, exited their vehicle, and separated the parties. While officers spoke to § 87(2)(b), § 87(2)(b) and § 87(2)(b) began physically fighting. Officers pulled the two women apart and handcuffed them. Police Officer Hovestadt dragged § 87(2)(b) up from the ground into a standing position, putting pressure on her knee and causing pain (**Allegation A: Force**, § 87(2)(g)).

Officers placed § 87(2)(b) and § 87(2)(b) in different vehicles and obtained identification from § 87(2)(b) and § 87(2)(b). Officers issued § 87(2)(b) and § 87(2)(b) summonses for disorderly conduct on scene. Police Officer Hovestadt gave § 87(2)(b)'s ID to § 87(2)(b). He transported § 87(2)(b) to the stationhouse, issued her a summons there, and did not return her ID to her. (**Allegation B: Abuse of Authority**, § 87(2)(g)).

There is evidence suggesting that PO Hovestadt provided a false official statement during his CCRB interview (**Allegation C:** § 87(2)(g)).

There is video footage of the incident from the body-worn cameras (BWC) of PO Chen, PO Hovestadt, Lt. Christopher Diakonikolas, PO Stevie Williamson, PO Daniel McCabe, PO Nicholas Pryor, PO Kengming Chang, PO Steven Furlan, and PO Barrett (footage at Board Reviews 01-10, summarized at Board Review 11). All references to video evidence below refer to the time stamp in the video player, not the on-screen clock embedded in the video itself. § 87(2)(b) also provided photographs of a related incident that occurred several days after the initial police encounter (Board Reviews 14-18).

Findings and Recommendations

Allegation (A) Force: Police Officer David Hovestadt used physical force against § 87(2)(b).
§ 87(2)(b):

§ 87(2)(b) provided a telephone statement on January 16, 2020 (Board Review 24). She was interviewed at the CCRB on January 23, 2020. § 87(2)(b) § 87(2)(b)'s brother who picked her up from the 113th Precinct stationhouse after the incident, provided a phone statement on January 28, 2020 (Board Review 25). § 87(2)(b) also provided a statement on January 28, 2020 (Board Review 26). On February 4, 2020, § 87(2)(b), § 87(2)(b)'s neighbor, provided a phone statement (Board Review 27). The investigation was not able to reach § 87(2)(b) and § 87(2)(b).

It is undisputed that § 87(2)(b) and § 87(2)(b) got into a physical altercation, fell to the ground, and PO Chen and PO Hovestadt separated the women. § 87(2)(b) alleged in both her statements that after handcuffing her, PO Hovestadt pulled her up from the ground to standing by yanking on her handcuffs, causing pain to her knee. Prior to the incident § 87(2)(b) had recently had knee surgery, and PO Hovestadt's action put pressure on her recovering knee.

In her telephone statement, § 87(2)(b) stated that once § 87(2)(b) was in handcuffs, PO Hovestadt

yanked her upwards to a standing position by pulling on the handcuff chain.

In PO Hovestadt's BWC at 1:29 minutes into the recording, § 87(2)(b) tells PO Hovestadt that she had surgery on her leg as he cuffs her (Board Review 02). She then tells him her brother is a first responder. Twenty seconds later, at 1:52, both PO Hovestadt and § 87(2)(b) get up from the ground. Though the hands of both parties are not visible in the footage at that moment, there is no rapid or forceful movement captured in the recording that would be indicative of the yanking or tugging of handcuffs. As the two move to a standing position, § 87(2)(b) does not make any sounds indicative of pain, nor does she make any mention of her leg, knee, or pain. Instead, she repeatedly tells PO Hovestadt that § 87(2)(b) started the fight. After standing up, and during the rest of the footage, § 87(2)(b) does not mention her surgery or any pain.

PO Hovestadt stated he assisted § 87(2)(b) from the ground to a standing position using normal procedure, holding her from behind and bringing her up. He did not use any force to bring her up from the ground.

§ 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer David Hovestadt seized § 87(2)(b) s property.

It is undisputed that PO Hovestadt obtained § 87(2)(b)s and § 87(2)(b)s ID's. PO Hovestadt issued a summons to § 87(2)(b) and PO Chen issued one to § 87(2)(b). The officers transported § 87(2)(b) to the stationhouse where PO Hovestadt issued her a summons. § 87(2)(g)

§ 87(2)(b) recounted that PO Hovestadt did not return her ID when he released her from the stationhouse. She realized she did not have the ID as her brother, § 87(2)(b) was driving her home. § 87(2)(b) and § 87(2)(b) returned to the stationhouse about ten minutes after leaving. § 87(2)(b) and § 87(2)(b) spoke to PO Chen, who briefly went into the back before returning, telling her that he did not know what happened to the ID, and advising her to order a new one.

§ 87(2)(b) similarly recounted that he drove § 87(2)(b) back to the stationhouse when she realized her ID was missing. He met a male officer involved in the incident who stated that officers must have misplaced the ID, and who advised § 87(2)(b) to get a replacement at the DMV. § 87(2)(b) did not recall the officer's appearance.

[§ 87(2)(b)] further recounted that, on the morning of January 8, 2020, her neighbor, [§ 87(2)(b)], texted her that two people outside her residence had told him they had her ID and were looking for her. [§ 87(2)(b)] took the ID from them, and he met [§ 87(2)(b)] outside her house and handed it over. [§ 87(2)(b)] entered her vehicle, at which point [§ 87(2)(b)] approached, banged on her car's window, and threatened her. [§ 87(2)(b)] left in a white sedan with [§ 87(2)(b)]. [§ 87(2)(b)] went to the 103rd Precinct stationhouse and filed a report about the incident (Board Review 13). She also provided the investigation with photos from the encounter (Board Reviews 14-18).

§ 87(2)(b) § 87(2)(g) confirmed that he

retrieved § 87(2)(b)'s ID from § 87(2)(b) that he handed it over to § 87(2)(b) outside, and that § 87(2)(b) and § 87(2)(b) briefly tried to attack § 87(2)(b) before leaving.

On PO Hovestadt's BWC at 9:30 minutes into the recording, PO Hovestadt asks § 87(2)(b) for her ID and removes it from her purse (Board Review 02). At 9:44 into the recording, her ID is visible as a horizontal driver's license (additional screen capture Board Review 19). This license resembles the one provided by § 87(2)(b) at her CCRB interview (Board Review 12).

At 15:29 minutes into the same recording, PO Hovestadt retrieves § 87(2)(b)'s ID from PO Chen. At 15:51 minutes, PO Hovestadt places two pieces of vertical ID on the hood and remarks "He's got two IDs? Jeez." At 17:05 into the recording, the two vertical pieces of ID are clearly visible (additional screen capture in Board Review 20). At 28:01 into the recording, PO Hovestadt returns the IDs to § 87(2)(b) saying "Here's your IDs," in the plural. The hand-off is not visible in the frame, but § 87(2)(b) can be heard thanking him.

At 28:26 minutes into the recording, PO Chen is sitting in the driver's seat of the police vehicle as § 87(2)(b) sits in the back. The officers are about to drive to the stationhouse, but Police Officer Hovestadt tells Police Officer Chen, "Hold on, let's get her ID real quick." He searches the passenger seat and § 87(2)(b)'s purse for her ID. At 28:42 minutes he holds out a vertical ID and asks where § 87(2)(b)'s ID is (Board Review 02, additional screen capture in Board Review 21). Police Officer Chen responds that he does not know. The video quality is not clear enough to identify whose ID Police Officer Hovestadt is holding, though the person's image on the vertical ID has short hair.

PO Hovestadt confirmed in his testimony that he took possession of § 87(2)(b)'s and § 87(2)(b)'s ID on scene. PO Hovestadt did the warrant checks at his vehicle for both individuals and found no outstanding warrants. After the warrant checks, PO Hovestadt returned § 87(2)(b)'s ID to him. PO Hovestadt still had § 87(2)(b)'s ID in his possession during the journey to the stationhouse. Prior to viewing the BWC footage, Police Officer Hovestadt testified that he returned § 87(2)(b)'s ID to her before another officer escorted her outside. After § 87(2)(b) was released, she returned to the stationhouse and stated that she did not get her ID back. PO Hovestadt told her he knew he had given it back to her, and another officer escorted her outside again. PO Hovestadt denied giving § 87(2)(b)'s ID to anyone besides her. PO Hovestadt denied giving her ID to § 87(2)(b).

After viewing his BWC footage from 28:23 minutes into the recording until 29:25 minutes, PO Hovestadt testified that the video refreshed his recollection that there was confusion about § 87(2)(b)'s ID. PO Hovestadt testified that he found § 87(2)(b)'s ID in his pocket after she was lodged in a cell. PO Hovestadt then specifically viewed the recording paused 28:42 minutes, when a vertical piece of ID was visible, but blurry, on screen. PO Hovestadt did not know whose ID was pictured on screen. He thought it may have been § 87(2)(b)'s. After reviewing the BWC footage, Police Officer Hovestadt denied that he gave § 87(2)(b)'s ID to anyone else besides her during the incident.

PO Chen denied that he obtained ID from any of the civilians on scene. § 87(2)(b) told him her name and he verified the information in the NYPD database in order to issue her a summons. PO Chen did not independently recall any confusion about a civilian's ID. He did not know if PO Hovestadt ever possessed § 87(2)(b)'s ID. PO Chen viewed the footage from PO Hovestadt's BWC from 28:21 to 29:22 minutes (Board Review 02). The video refreshed PO Chen's recollection that he asked PO Hovestadt if he had everything before they left for the stationhouse. PO Chen did not have any other discussion, either on scene or at the stationhouse, about the missing ID.

mentioned in the BWC. PO Chen did not know if the missing ID referenced in the BWC clip was ever found at a later point. PO Chen did not believe he had possession of § 87(2)(b)'s ID at any point. PO Chen did not believe he had any conversation with § 87(2)(b) about her ID after she was released from the stationhouse, and he did not see any other officer have such a conversation with her. Upon learning that § 87(2)(b) had specifically recounted that she met him at the stationhouse, and he told her that officers had lost her ID, PO Chen testified that he did not recall such a conversation but it might have happened.

§ 87(2)(g)

§ 87(2)(g)

Patrol Guide Procedure 218-30 states that when non-contraband property is removed from the person or possession of any individual and taken into police custody for any reason (emphasis from the Patrol Guide) the member of service must prepare a Property Clerk Invoice for the items removed. The invoice is only completed once it has been examined by the individual for accuracy, and the individual is entitled to a copy of the worksheet. The member of service should also provide the individual with form PD521-124 entitled "Notice to Persons from Whom Property Has Been Removed by the Police Department." (Board Review 22).

Under the Fourteenth Amendment, no government body may confiscate an individual's property without due process. In McClendon v. Rosetti, 460 F.2d 111 the United States Court of Appeals for the Second Circuit found that even when incidental to an arrest, police seizure (and retention or destruction) of property other than contraband was unconstitutional when it lacked sufficient due process (Board Review 31).

§ 87(2)(g)

Allegation (C) Other Misconduct: There is evidence suggesting that Police Officer David Hovestadt provided a false official statement in violation of Patrol Guide Procedure 203-08.

The CCRB recommends that the NYPD conduct further investigation because there is evidence suggesting that PO Hovestadt provided a false official statement. PO Hovestadt sat for an interview on March 13, 2020, eighteen days before the New York City Charter Revision authorizing the CCRB to investigate the truthfulness of statements made during its investigations went into effect on March 31, 2020 (Board Review 30). As discussed above, the investigation determined that PO Hovestadt gave § 87(2)(b)'s ID to § 87(2)(b)

PO Hovestadt provided an initial narrative that did not mention § 87(2)(b)'s ID. Informed it had been alleged that § 87(2)(b)'s ID was not returned to her, PO Hovestadt stated § 87(2)(b) did come back after being released and say that. PO Hovestadt told her he did return it to her.

The following verbatim exchange occurred between 18:09 and 19:05 in Part 1 of PO Hovestadt's interview:

Inv. Kaisla: Specifically, it had been alleged that § 87(2)(b) did not retrieve her ID back from the police at any point—

PO Hovestadt: I know I released it to her. But she did come back later on saying that we did lose her ID but I'm like, I know I gave it to her when she left.

Inv. Kaisla: When you say 'when she left,' when—

PO Hovestadt: The precinct. Yeah she came back a little while later and I told her, I'm like, well I know I gave it to ya

Inv. Kaisla: So you returned her ID to her at the precinct, just to be clear?

PO Hovestadt: Yeah

Inv. Kaisla: Specifically it had been alleged, um, that her ID had actually been given to someone else that was not her

PO Hovestadt: Not to my knowledge

Inv. Kaisla: Also specifically it had been alleged that it had actually been given to um, the male, § 87(2)(b) during the incident

PO Hovestadt: Not to my knowledge

During PO Hovestadt's interview, footage from his BWC camera was played from 28:23 minutes into the recording until 29:25 minutes. As described above, the footage contained PO Hovestadt searching for § 87(2)(b)'s ID in the driver's seat of the police vehicle and holding a vertical ID. PO Hovestadt then stated he found the ID later on at the stationhouse in his pocket. After viewing the BWC footage, Police Officer Hovestadt again confirmed that he did not give § 87(2)(b)'s ID to anyone else besides her during the incident.

The following verbatim exchange occurred between 2:56 and 3:19 in Part 2 of PO Hovestadt's interview:

PO Hovestadt: At that point we're just taking her to the 103rd Precinct. I mean, there was the confusion with the ID. I did find it later on— it was in my pocket.

Inv. Kaisla: Okay, so you did find it?

PO Hovestadt: Yeah

Inv. Kaisla: At what point did you find it in your pocket?

PO Hovestadt: From that point I believe we got to the 103rd Precinct. We were able to lodge her in the cell, at that point now we were able to sort everything out.

As discussed above, PO Hovestadt's additional detail of finding the ID in his pocket at the stationhouse is not corroborated by any other evidence.

According to NYPD Patrol Guide Procedure 203-08 (Board Review 28), the “intentional making of a false official statement is prohibited, and will be subject to disciplinary action, up to and including dismissal. Intentionally making a false official statement regarding a material matter will result in dismissal from the Department, absent exceptional circumstances.”

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 29).
- Police Officer Hovestadt has been a member of service for nine years. He has been a subject in two prior CCRB complaints and three total allegations, none of which was substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- A Notice of Claim request was submitted to the NYC Office of the Comptroller on September 3, 2020. On September 11, 2020 the NYC Office of the Comptroller reported it did not locate any relevant Notices of Claim.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 15

Investigator:

Emma Kaisla
Signature

Inv. Emma Kaisla
Print Title & Name

10/27/21
Date

Squad Leader:

Simon Wang
Signature

IM Simon Wang
Print Title & Name

10/27/21
Date

Reviewer:

Signature

Print Title & Name

Date

CCRB Case # 202000323

